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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,023	02/28/2001	Philip Edwin Howse	REF/HOWSE/09	5866

7590 11/12/2004  
Bacon & Thomas  
4th Floor  
625 Slaters Lane  
Alexandria, VA 22314

EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/736,023

Applicant(s)

HOWSE ET AL.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16, 18-44 and 46-48 is/are allowed.
- 6) ☒ Claim(s) 17, 45 and 49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 49 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Geary 3,162,573.

Geary discloses a pesticidal composition (see Example 15; also see claims 13, 14) including particles (pellets) comprising a magnetic material (colloidal iron powder which is capable of being acted upon by a magnet) in admixture with a pesticide or behavior modifying chemical (see col. 3), or particles of a magnetic material coated with a pesticide or behavior modifying chemical (all components placed within a resin), the particles of a diameter such that when a pest comes into contact with the particles they are transferred to the pest and adhere thereto (Geary discloses an iron powder; also specific size not being claimed, therefore particles are capable of adhering as claimed).

3. Claims 17, 45, 49 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Price et al. 5,492,696.

Price et al. discloses a pesticidal composition in particulate form (microtubules) comprising particles containing magnetic material (iron; see col. 18, lines 38-55) in admixture with a pesticide or behaviour modifying chemical (see col. 18, lines 17-37),

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the particles having an average particle size diameter in the range of 2 to 100 micrometers (see col. 7, lines 27-32).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geary 3,162,573.

Geary does not disclose the particles having an average particle size diameter in the range of 2 to 100 micrometers. It would have been an obvious matter of design choice to make the particle size diameter in the range of 2 to 100 micrometers, since applicant has not disclosed that by doing so produces any unexpected results or is critical to the design and because a person of ordinary skill in the art would readily design the particles such that their diameter is appropriate for the size of the pests or insects to be destroyed.

***Allowable Subject Matter***

6. Claims 1-16, 18-44, 46-48 are allowed.

7. The following is an examiner's statement of reasons for allowance:

In regard to claim 1, the prior art of record does not disclose the method of trapping insects comprising the step of coating a zone of or within the housing with a composition including particles comprising magnetic material, whereby an insect in contact with the composition becomes at least partially coated with the composition and is destabilized, thereby falling into the trapping area.

In regard to claim 23, the prior art of record does not disclose an insect trap comprising a zone of the housing or a zone within the housing comprising a magnetically polarized material and the zone being coated with a composition including particles comprising a magnetic material of opposite polarity to that of the magnetically polarized material.

In regard to claim 15, the prior art of record does not disclose a pesticidal composition which comprises composite particles each comprising a core of an inert substance and the core being impregnated or coated with a magnetic material.

In regard to claim 30, the prior art of record does not disclose a method of killing or controlling insects comprising the step of coating a surface with a composition including particles comprising a magnetic material in combination with an agent selected from the group consisting of pesticides and behavior modifying chemicals and allowing the insects to contact the coated surface whereby the insects become at least

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partially coated with the magnetic material and thereby become exposed to the agent acting to kill or control the insects.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wallach '960 discloses a method of coupling targeting molecules to lipid vesicles wherein lipophilic materials such as pheromones and organic pesticides can be encapsulated in the vesicles and that a diagnostic agent can be encapsulated therein such as magnetic particles (see claims 20 & 23).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA